

Adjourned Date: 1/29/15 at
9:30 AM.

M. David Graubard, Esq.
Kera & Graubard
Attorneys for Defendant
240 Madison Avenue, 7th Fl.
New York, NY 10016
(212) 681-1600

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In Re:

FRATELLI RICATTO LIMITED,

Debtor.
-----X

DAVID J. DOYAGA, SR., As Trustee of
The Estate of Fratelli Ricatto Limited

Plaintiff,

-against-

MICHAEL P. RICATTO,

Defendant.
-----X

Chapter 7

Case No. 11-44761

Adv. No. 13-1151

CORRECTED STATEMENT OF MATERIAL FACTS
PURSUANT TO LOCAL BANKRUPTCY RULE 7056-1

Defendant Michael P. Ricatto, by his counsel Kera & Graubard, hereby submits the following Statement of Facts to which defendant believes there is no genuine dispute:

1. Michael P. Ricatto is a natural person and the defendant in this matter ("Ricatto" or "Defendant").
2. Defendant operated the debtor Fratelli Ricatto Limited ("Debtor") as a flea market.
3. David J. Doyaga, Sr. is the court appointed Trustee in Bankruptcy of the Debtor ("Trustee" or "Plaintiff").

4. Plaintiff commenced this action by filing a complaint on May 31, 2013.

5. Defendant responded by filing an answer to the complaint dated July 24, 2013.

6. The complaint seeks the recovery of \$106,642.27 ("Claim Amount") as either a preference (First Cause of Action) or, in the alternative, a fraudulent conveyance (Second Cause of Action).

7. The complaint did not specifically enumerate the elements of the Claim Amount.

8. Counsel for the Defendant requested the Trustee to supply a list of the elements in the Claim Amount .

9. The Trustee supplied a list of the elements of the Claim Amount ("Trustee's List") by letter dated September 5, 2013, a copy of which is annexed hereto as Exhibit A.

10. The Defendant alleged eight affirmative defenses in the answer.

11. Superior Diesel Tech, Inc . ("Superior") is a domestic corporation owned and controlled by the Defendant.

12. Michael P. Ricatto, LLC ("LLC") is a domestic limited liability company owned and controlled by the Defendant.

13. For each payment listed on the Trustee's List, there is a deposit into the Debtor's account on the same day for the same amount of money.

14. On March 15, 2011, the Defendant, through Superior, deposited the sum of \$7,452.52 into the Debtor's account.

15. On January 27, 2011, the Defendant, through Superior deposited the sum of \$7,013.92 into the Debtor's account.

16. On January 25, 2011, the Defendant, through Superior deposited the sum of \$8,026.92 into the Debtor's account.

17. On January 20, 2011, the Defendant, through Superior deposited the sum of \$4,798.46 into the Debtor's account.

18. On January 24, 2011 the Defendant, through Superior deposited the sum of \$9,864.02 into the Debtor's account.

19. On January 18, 2011, the Defendant, through Superior deposited the sum of \$6,124.82 into the Debtor's account.

20. On December 31, 2010, the Defendant, through Superior deposited the sum of \$9,382 into the Debtor's account.

21. On December 23, 2010, the Defendant, through Superior deposited the sum of \$9,648.10 into the Debtor's account.

22. On December 22, 2010, the Defendant, through Superior deposited the sum of \$4,186.17 into the Debtor's account.

23. On December 28, 2010, the Defendant, through Superior deposited the sum of \$7,963.82 into the Debtor's account.

24. On December 20, 2010, the Defendant, through Superior deposited the sum of \$9,321.46 into the Debtor's account.

25. On June 7, 2010, the Defendant, through Superior deposited the sum of \$5,974.87 into the Debtor's account.

26. On June 4, 2010, the Defendant, through Superior deposited the sum of \$7,926.94 into the Debtor's account.

27. On June 1, 2010, the Defendant, through Superior deposited the sum of

\$8,958.25 into the Debtor's account.

28. Defendant, acting on his own behalf and on behalf of Superior and LLC, agreed with the Debtor that the exchange transactions listed on the Trustee's List and in paragraphs 14 through 27 above would be contemporaneous transactions.

29. There was no antecedent debt for the payments listed on the Trustee's List.

30. There was valid consideration furnished to the Debtor for the payments set forth on the Trustee's List.

31. The Trustee did not set forth any allegations in the complaint that demonstrated that the Debtor received less than a reasonably equivalent value in exchange for the transfers on the Trustee's List.

32. The result of the transactions listed on the Trustee's List and in paragraphs 14 through 27 herein resulted in no diminution of the Debtor's estate.

Dated: New York, New York
October 7, 2014

KERA & GRAUBARD
Attorneys for Defendant
Michael P. Ricatto

By 

M. David Graubard (MDG 5442)
240 Madison Avenue, 7th fl
New York, NY 10016
(212) 681-1600

David J. Doyaga, Sr.
United States Bankruptcy Trustee
26 Court Street- Suite 1002
Brooklyn, NY 11242
Tel:(718) 488-7500
Fax:(718) 709-8854

September 5, 2013

Via Fax (212)681-1601
M. David Graubard, Esq.
Kera & Graubard
Attorney at Law
240 Madison Avenue, 7th fl
New York, NY 10016

Re: David J. Doyaga, Sr. Trustee of the
Estate of Fratelli Ricatto Limited v. Michael
P. Ricatto
Case Number: 13-01151

Dear Mr. Graubard;

Enclosed with this letter is the information you informally requested regarding the transfers and the amount of each transfer made from Fratelli Ricatto Limited to your client, Michael Ricatto.

Thank you.

Sincerely,

s/ David J. Doyaga, Sr.

David J. Doyaga, Sr.
United States Bankruptcy Trustee

Encl: Transfers from Fratelli Ricatto Limited to Michael Ricatto

EXHIBIT A

Fratelli Ricatto Limited
 dba Meeker Avenue Flea Market
 Case No.: 11-44761-jf
 Filing date: 6/1/11

Payee	Check Date	Check	Amount
Michael P. Ricatto	03/15/11	1525	7,452.52
Michael P. Ricatto	01/27/11	1460	7,013.92
Michael P. Ricatto	01/21/11	1440	8,026.92
Michael P. Ricatto	01/20/11	1439	4,798.46
Michael P. Ricatto	01/18/11	1437	9,864.02
Michael P. Ricatto	01/17/11	1436	6,124.82
Michael P. Ricatto	12/24/10	1413	9,382.00
Michael P. Ricatto	12/23/10	1412	9,648.10
Michael P. Ricatto	12/22/10	1411	4,186.17
Michael P. Ricatto	12/21/10	1410	7,963.82
Michael P. Ricatto	12/20/10	1409	9,321.46
Michael P. Ricatto	06/07/10	1184	5,974.87
Michael P. Ricatto	06/04/10	1179	7,926.94
Michael P. Ricatto	06/01/10	1171	8,958.25
			106,642.27

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CERTIFICATION OF SERVICE OF
CORRECTED STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

M. David Graubard, an attorney admitted to practice in the Eastern District of New York, hereby affirms that on October 7, 2014 he served a copy of the Statement of Material Facts Not in Dispute by e-mail on the following:

David J. Doyaga, Sr., Trustee
David.doyaga@verizon.net

Dated: New York, New York
October 7, 2014


M. David Graubard (MDG 5442)
KERA & GRAUBARD
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